

Patent  
Attorney Docket No. 032796-101

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	)	<b>MAIL STOP PETITION</b>
Lynn A. DOUCETTE-STAMM et al.	)	
Application No.: 10/092,411	)	Group Art Unit: 1637
Filed: August 22, 2002	)	Examiner: Young J. Kim
For: NUCLEIC ACID AND AMINO ACID	)	Confirmation No.: 9046
SEQUENCES RELATING TO	)	
STAPHYLOCOCCUS EPIDERMIDIS	)	
FOR DIAGNOSTICS AND	)	
THERAPEUTICS	)	

**PETITION FOR CORRECTION OF FILING DATE PURSUANT TO 37 C.F.R. § 1.182**

ATTN: Office of Patent Legal Administration  
Office of the Deputy Commissioner for Patent Examination Policy  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Petition requests correction of the filing date of the above-referenced application to March 7, 2002 from August 22, 2002. With this Petition is filed herewith the requisite fee of \$400.00 under 37 C.F.R. § 1.17(f).

The August 22, 2002 filing date was assigned to the above-referenced application (now abandoned), because the application as-filed had pages missing. The Patent Office issued a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures on April 22, 2002 indicating that pages 21 and 79-318 were missing. The missing pages were supplied in a complete substitute specification submitted on August 22, 2002. Based on this submission, the Patent Office awarded the above-referenced application the filing date of August 22, 2002.

Applicants state that the instant application is a divisional application of U.S.S.N. 09/134,001 filed August 13, 1998, now U.S. Patent No. 6,380,370, and which claims priority of U.S. Provisional Application No. 60/055,779, filed August 14, 1997 and U.S. Provisional Application No. 60/064,964, filed on November 8, 1997.

Upon filing the subject application, Applicants amended the first page of the subject application to read:

12/15/2004 CNGUYEN 00000063 10092411 400.00 DP  
01 FC:1462

This application is a divisional of Application No. 09/134,001, filed on August 13, 1998, which claims priority of U.S. Provisional Application No. 60/055,779 filed on August 14, 1998, and U.S. Provisional Application No. 60/064,964 filed on November 8, 1997, all of which are hereby incorporated herein by reference in their entirety.

See page 3, Item 11 of attached Request for Filing Continuation/Divisional Application Under 37 C.F.R. § 1.53(b) dated March 7, 2002. The Applicants also indicated on page one of the Request for Filing Continuation/Divisional Application Under 37 C.F.R. § 1.53(b) that "[t]he entire disclosure of the prior application from which a copy of the oath or declaration is supplied herewith is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein."

Accordingly, Applicants assert that as the Office had a copy of the complete parent application (now U.S. Patent 6,380,370) and as the specification of that application was incorporated by reference in its entirety, for at least those reasons, the filing date of the instant application should be March 7, 2004, because the missing matter is not believed to be necessary. See M.P.E.P. § 506.02.

Therefore, Applicants respectfully request by this Petition that the Patent Office change the filing date of the subject application from August 22, 2002 to March 7, 2002.

If the Office has any questions which would further expedite this matter, the Office is invited to contact the undersigned attorney to discuss any remaining issues.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800 or to credit said account for any overpayment.

Respectfully submitted,  
BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: December 14, 2004

By:   
Mercedes K. Meyer  
Registration No. 44,939

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620

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Patent

Attorney's Docket No. 032796-101

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**REQUEST FOR FILING CONTINUATION/DIVISIONAL  
APPLICATION UNDER 37 C.F.R. § 1.53(b)****Box PATENT APPLICATION**Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This is a request for filing a ☐ continuation ☒ divisional application under 37 C.F.R. § 1.53(b) of pending Application No. 09/134,001 filed on August 13, 1998, for NUCLEIC ACID AND AMINO ACID SEQUENCES RELATING TO STAPHYLOCOCCUS EPIDERMIDIS FOR DIAGNOSTICS AND THERAPEUTICS, by the following named inventor(s):

(a) Full Name Lynn A. Doucette-Stamm(b) Full Name David Bush

(c) Full Name \_\_\_\_\_

☐ Applicant(s) hereby requests that the above-captioned application **NOT BE PUBLISHED** under 35 U.S.C. § 122(b) and 37 C.F.R. § 1.211. The undersigned hereby certifies that the invention disclosed in this application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.

☒ The entire disclosure of the prior application from which a copy of the oath or declaration is supplied herewith is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

☐ This application is being filed by less than all the inventors named in the prior application. In accordance with 37 C.F.R. 1.63(d)(2), the Commissioner is requested to delete the name(s) of the following person or persons who are not inventors of the invention being claimed in this application.

(a) Full Name \_\_\_\_\_

(b) Full Name \_\_\_\_\_

(c) Full Name \_\_\_\_\_

☐ This application is being filed by more than all the inventors named in the prior application. In accordance with 37 C.F.R. 1.63(d)(5), a new oath or declaration is enclosed, and the Commissioner is requested to add the name(s) of the following person or persons who are inventors of the invention being claimed in this application.

(a) Full Name \_\_\_\_\_

(b) Full Name \_\_\_\_\_

(c) Full Name \_\_\_\_\_

**21839**DOCKETED  
filed 3.7.02 <sup>185</sup>

(12/01)

- ☐ Applicant(s) suggests Figure    for inclusion on the front page of the patent application publication and/or patent.
1. ☒ Enclosed is a copy of the prior Application No. 09/134.001 as originally filed on August 13, 1998, including copies of the specification, claims, drawings and the executed oath or declaration as filed.
2. ☐ Enclosed is a revised prior application and a copy of the prior executed oath or declaration as filed. No new matter has been added to the revised application.
3. ☐ Small entity status is hereby claimed.
4. ☒ The filing fee is calculated below ☒ and in accordance with the enclosed preliminary amendment:

C L A I M S					
	NO. OF CLAIMS		EXTRA CLAIMS	RATE	FEE
Basic Application Fee					\$740.00 (101)
Total Claims	18	MINUS 20 =	0	× \$18.00 (103) =	0
Independent Claims	7	MINUS 3 =	4	× \$84.00 (102) =	\$336.00
If multiple dependent claims are presented, add \$280.00 (104)					
Total Application Fee					\$1,076.00
If small entity status is claimed, subtract 50% of Total Application Fee					
Add Assignment Recording Fee of \$ <u>  </u> if Assignment document is enclosed					
<b>TOTAL APPLICATION FEE DUE</b>					<b>\$1,076.00</b>

5. ☐ Charge \$            to Deposit Account No. 02-4800 for the fee due.
6. ☒ A check in the amount of \$ 1,076.00 is enclosed for the fee due.
7. ☒ The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.
8. ☒ Cancel in this application original claims 1-10 of the prior application before calculating the filing fee.
9. ☐ New drawings are enclosed.
10. ☐ Priority of Application No.    filed on    in    (country) is claimed under 35 U.S.C. § 119.


- ☐ The certified copy of the priority application
- ☐ is enclosed.
- ☐ was filed on \_ in prior Application No. \_, filed on \_, and acknowledged by the Examiner on \_ in Paper No. \_.
- ☐ has not yet been filed.
11. ☒ Please amend the specification by inserting before the first line the sentence:
- ☒ --This application is a ☐ continuation ☒ divisional of Application No. 09/134.001, filed on August 13, 1998, which claims priority of U.S. Provisional Application No. 60/055.779 filed on August 14, 1997, and U.S. Provisional Application No. 60/064.964 filed on November 8, 1997, all of which are hereby incorporated herein by reference in their entirety--.
- ☐ --This application is a ☐ continuation ☐ divisional of U.S. Application No. \_\_, filed on \_\_, which was a national stage filing under 35 U.S.C. § 371 of International Application No. \_\_ filed on \_\_, which International Application ☐ was ☐ was not published by the International Bureau in English on \_\_.--.
- ☐ --This application is a ☐ continuation ☐ divisional of U.S. Application No. \_\_, filed on \_\_, which was a continuation of International Application No. \_\_, filed on \_\_, which International Application ☐ was ☐ was not published by the International Bureau in English on \_\_.--.
12. ☐ A preliminary amendment is enclosed.
13. ☒ An Information Disclosure Statement is enclosed.
14. ☐ A General Authorization for Payment of Fees and Petitions for Extensions of Time is enclosed.
15. ☒ Also enclosed is a Sequence Listing submitted on CD-Rom (3 copies); and Declaration Pursuant to 37 CFR §1.821-1.825.
16. ☒ The power of attorney in the prior application is to Teresa Stanek Rea, Mercedes K. Meyer, Nina Pearlmutter, and Robert Spadafora.
- a. ☒ The power appears in the original papers in the prior application.
- b. ☐ Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.
- c. ☐ Recognize as Associate Attorney \_.

- d. ☒ Address all future communications to: (May only be completed by applicant, or attorney or agent of record.)

Teresa Stanek Rea  
BURNS, DOANE, SWECKER & MATHIS, L.L.P.  
P.O. Box 1404  
Alexandria, Virginia 22313-1404

Date: March 6, 2002

By:

  
Jennifer A. Topmiller  
Registration No. 50,435

ADDRESS OF SIGNATOR:

BURNS, DOANE, SWECKER & MATHIS, L.L.P.  
P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620

- ☐ inventor(s)  
☐ assignee of complete interest  
☐ attorney or agent of record  
☒ filed under 37 C.F.R. § 1.34(a)